. .

INACTIVE SO10052

SURPLY THE

PETE WILSON, Governor

STATE WATER RESOURCES CONTROL BOARD

THE PAUL R. BONDERSON BUILDING 901 P STREET SACRAMENTO, CA 95814

(916) 657-1989

FAX: (916) 657-1485

Mailing Address
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95812-2000



.

FEB 1 1 1993

In Reply Refer to:363:RF:262.0(45-18-2)

To Enclosed Mailing List

Ladies and Gentlemen:

UNAUTHORIZED DIVERSION FROM UNNAMED STREAM (AKA JOHNSON CREEK) TRIBUTARY TO MONTGOMERY CREEK, SHASTA COUNTY, APPLICATION 26015

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) conducted an investigation of water rights on an unnamed stream (aka Johnson Creek), tributary to Montgomery Creek, in response to protests against Water Right Application 26015. The disputed diversion is located in the NW 1/4 of the SW 1/4 of Section 32, T35N, R1E, MDB&M. The details and results of the investigation are embodied in the "Staff Analysis of Minor Protested Application, April 1992" for Application 26015. The staff analysis was mailed to all parties on May 12, 1992. The staff analysis addressed the water rights of ten protestants, collectively referred to as the "Upper Ditch Users", and refuted their claims to a pre-1914 notice of appropriation and riparian water rights. The analysis indicated that the Upper Ditch Users should file an application with the State Water Board for a permit to appropriate unappropriated water from Johnson Creek.

As a result of complaints filed by Gaylan Eslinger, William Rieck, Don Robinson, Lester Eldridge and Richard Brown, a Division staff engineer visited the diversion point on November 9, 1992, and noted that the diversion from Johnson Creek to the upper ditch was still in operation. Based on the findings in the staff analysis, the continued diversion of water from Johnson Creek to the Upper Ditch, thence to the properties north of State Highway 299, is an unauthorized diversion and a trespass against the State within the meaning of State Water Code Sections 1052-1055, inclusive.

You are hereby directed to cease the diversion of water from Johnson Creek into the Upper Ditch and render your diversion facilities inoperable within 30 days of the date of this letter. The facility shall remain inoperable until such time as a valid water right has been secured. Failure to comply with this directive may cause the State Water Board to seek administrative civil liability of up to \$500 per day of the violation.

You may apply to secure an appropriative water right for the diversion from Johnson Creek by filing an application for your own place of use; or, a group of people may form a mutual water company and file one application in the name of the water company. You may wish to contact Murt Lininger, Chief of Applications and Hearing Sections for application forms and more information specific to your situation. Mr. Lininger may be reached at (916)1650 rh954.

1-27-93 IURNAME WR 540 REV. 1/ES

1/28/93

ire Rolling

If you have any questions concerning this matter, I may be reached at $(916)\ 657-1359$. The staff person who visited the site was Ricardo Fuentes. He may be reached at $(916)\ 657-1989$.

Sincerely,

CERTAL SERVED TT.

Edward C. Anton, Chief Division of Water Rights

CERTIFIED

Enclosure bcc: M. K. Lininger

RFUENTES:knox:final:1/27/93 rknox300:ricardo:L26015

State of California, State Water Resources Control Board Division of Water Rights, P.O. Box 2000, Sacramento, CA 95812-2000 Info: (916) 341-5300, FAX: (916) 341-5400, Web: http://www.waterrights.ca.gov



SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

If the information below is inaccurate, please line it out in red and provide current information.

Notify this office if ownership or address changes occur during the coming year.

Please Complete and Return This Form by August 1, 2004.

*If the mail recipient's name, address or phone No. is wrong or missing, please correct.

Owner of Record: BARRY I. SDAPPS.

Owner of Record: BARRY L SPARKS;

DIV. OF VILLE INGHTS SACRAWENTO

STATEMENT NO.: \$010052 CONTACT PHONE NO.: (530)337-6712

PH 12: 33

PRIMARY CONTACT OR AGENT FOR MAIL & REPORTING: **BARRY L SPARKS** PO BOX 182 New P.O. Box #371 *
MONTGOMERY CREEK, CA 96065

Source Name: Tributary To:

JOHNSON CREEK

MONTGOMERY CREEK

Count	y: ion Within:	Shasta NW1/4 of SW1/4 Section 32,	Г35N, R01E, MB&M		Year of First Use: Parcel Number:	1976
A: B.		ed under: Riparian claim use (Please provide if missing			Other (explain),	X
C.	Amount of U	Ise – Enter the amount (or the a	approximate amount	t) of water used each	month	
D. E.	Year 2001 2002 2003 Purpose of Unrigation Other (speci	Amounts below are: Jan Feb Mar DV U DV U Use - Specify number of acres i acres; St	Apr May DYY DYY DYY Prigated, stock watering any changes in you	Acre-feet June July red, persons served, of the persons served, of the persons served, of the persons served are project since your project sin	Aug Sept Oct DY 1 DY 1 DY DY 1 DY DY 2 DY DY 2 DY DY 3 DY DY 3 DY DY 4 DY DY 4 DY DY 5 DY DY 6 DY DY 6 DY DY 7 DY DY DY 7 DY DY DY 7 DY DY DY 7 DY DY DY DY DY DY DY DY DY DY	Nov Dec Total Annual Dry
F.	1. Conser a. Al b If cl	rvation of water re you now employing water co escribe any water conservation credit toward beneficial use of laimed under section 1011 of th eductions in Diversions:	nservation efforts? efforts you have ini water under claimed e Water Code, plea	YES NO I pre 1914 appropriative se show the amounts	ve water right for water not of water conserved: (af/mg) yr	t used due to a conservation effort is (af/mg) (af/mg)
	. 13	have data to support the above	surface water use r	reductions due to cons	servation efforts. YES	NO SEP 1 0 2004

ST-SUPPL (6-03)

-		
2. Wate	r quality and wastewater reclamation	
a.	Are you now or have you been using reclaimed water from a wastewater treatment facility, desalination facilit a degree which unreasonably affects such water for other beneficial uses? YES NO	y or water polluted by was
IA.	If credit toward use under a claimed pre 1914 appropriative water right through substitution of reclaimed wate polluted water in lieu of appropriated water is claimed under section 1010 of the Water Code, please show ar and amounts of reclaimed water used:	er, desalinated water or nounts of reduced diversio
	yr (af/mg) yr (af/mg) yr (af/mg) yr I have data to support the above surface water use reductions due to wastewater reclamation. YES NO	(af/mg)
s. Conj	unctive use of surface water and groundwater	
a.	Are you now using groundwater in lieu of surface water? YES NO	2
b.	If credit toward use under a claimed pre 1914 appropriative right through substitution of groundwater in lieu o claimed under section 1011.5 of the Water Code, please show the amounts of groundwater used:	f appropriated water is
'\	yr (af/mg) yr (af/mg) yr (af/mg) yr have data to support the above surface water use reductions due to conjunctive use efforts. YES NO _	(af/mg)
1	<u> </u>	<u>i: </u>
	tand that it may be necessary to document the water savings claimed in "F." above if credit under Water Cod n the future.	e sections 1010 and 1011
declar	that the information in this report is true to the best of my knowledge and belief.	
	July 29 20 94 pat Montgomery Creek	, T., Californ
SIGNA	TURE: Davy of Sparky	
PRINTE	D NAME: (fifst name) (middle init) (II	ast fame)
COMPA	NY NAME.	ast yame,
	If there is insufficient space for your answers, please use the space provided below.	Î
ITEM		
I E IVI	CONTINUATION	i.
<u></u>		· ' ' '
1	· · · · · · · · · · · · · · · · · · ·	1. 1
1		1 ,
1		<u> </u>
		۲, ,
	GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA	. (
Thoras		1
ingle a	re two principal types of surface water rights in California. They are riparian and appropriative rights.	I

A ribarian right enables an owner of land bordering a natural lake or stream to take and use water on his riparian land. Riparian land must be in the same watershed as the water source and must never have been severed from the sources of supply by an intervening parcel without reservation of the riparian right to the severed parcel. Generally, a riparian water user must share the water supply with other riparian users. Riparian rights may be used to divert the natural flow of a stream but may not be used to store water for later use or divert water which originates in a different watershed, water previously stored by others, return flows from use of groundwater, or other "foreign" water to the natural stream system.

An appropriative right is required for use of water on nonriparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914, new appropriators have been required to obtain a permit and license from the State. Appropriate rights can be granted to waters "foreign" to the natural stream system.

Statements of Water Diversion and Use must be filed by riparian and pre 1914 appropriative water users as set forth in Water Code section 5100 with specific exceptions. The filing of a statement (1) provides a record of water use, (2) enables the State to notify such users if someone proposes a new appropriation upstream from their diversions, and (3) assists the State to determine if additional water is available for future appropriators.

The above discussion is provided for general information. For more specific information concerning water rights, please contact an attorney or write to this office. We have several pamphlets available. They include: (1) Statements of Water Diversion and Use, (2) Information Pertaining to Water Rights in California, and (3) Appropriation of Water in California.

"The energy challenge facing California is real. Every California needs to take immediate action to reduce energy consumption.

For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at http://www.swrcb.ca.gov"

ST-SUPPL (6-03)

* PLEASE COMPLETE, SUBMIT THE ORIGINAL AND MAKE A COPY FOR YOUR RECORDS

STATE WATER RESOURCES CONTROL BOARD DIVISION OF WATER RIGHTS

P.O. BOX 2000 SACRAMENTO, CA 95812-2000

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

STATEMENT NO: S010052 OWNER OF RECORD: BARRY L SPARKS

BARRY L SPARKS PO BOX 182 -MONTGOMERY CREEK, CA 96065

SOURCE: JOHNSON CREEK

TRIBUTARY TO: MONTGOMERY CREEK

COUNTY: SHASTA

DIVERSION

WITHIN: NW% OF SW% SECTION 32, T35N, R1E, MDB&M.

TELEPHONE NUMBER: (916) 337-6734

YEAR OF FIRST USE: 1976

PARCEL NO:

; Domestic _

(If any of the above information is inaccurate or missing, please correct. Notify this office if ownership or

					ETURN								
Wa	ter is use	ed under	: Ripari	an claim		; Pre	1914 rig	ht	; Ot	her (exp	oļain) <u></u>	pprop	iative
<u>Ye</u>	ar of first	<u>use</u> (Pl	ease pro	ovide if n	nissing a	bove) _		1976	 •				
<u>An</u>	nount of U	l <u>se</u> - Ent	er the ar	mount of	water us						ișe are r	ot know	n,
A mo	unts belo	w are:	☑ Gal	lons	o A	Acre-feet	t	(othe	er)				
V.	JAN.	FEB.	MAR.	APR.	MAY	JUNE	ĴULY	AUG.	SEPT.	ост.	NOV.	DEC	TOTAL ANNUAL
,											13		
92	60,000	60,000	60,000	80,000	300,000	650,000	960,000	900,000	600,000	100,000	60,000	60,000	3,430,000
92 93	60,000	60,000	60,000	80,000	300,000	60,000	900,000	900,000	600,000	100,000	60,000	60,000	3,430,000 3,430,000 1,800,000

2000 300

*** CONTINUE ON BACK PAGE ***

2,000 seelli

acres; Stockwatering

Other (specify) Re-forested

WR40-1 (1/95)

					r	
	POF ALIBAMO TI	IF ODIČINIALI		- A 00 PM		
EASE COMPL	ETE, SUBMIT TH	ie originai	L AND MAKI	E A COPY	FOR YOU	R RECOR
F Changes in I	Method of Diversion	n - Describe anv	changes in you	r project since	vour previo	us statement
	ew pump, enlarged				, you, p.o	
						1
			<u>-</u> -		į×	ļ. !
	water listed in Part reclaimed or pollute			ted water, ple	ase indicate	the annual
				`	4.	
				-	l _i	1
I declare unde	r penalty of perjury tha	/	this report is true t	o the best of my	rknowiedge⊮an∈ ∽ // i	d Deller.
DATED:	6/30	19 <u>95</u> /,/at_	Muto	Joney (reh	🐧, California
SIGNATURE:	Donn	1 & &	part		4 ,	1
PRINTED NAME	: Bark	L	hee	·	Spaville	S
COMPANY NAM	(FIRST NAM	AE)	(M. NAME)		(LAST NAME)	1
					1	}
						ŀ
					i I	
	GENERAL INFORI	MATION: PERTAIN	IING TO WATER	RIGHTS IN CA	LIFORNIA	4
There are two prin	cipal types of surface	water rights in Ca	alifornia. They are	riparian and a	ppropriative ri	ghits.
Riparian land mus of supply by an int water user must sl of a stream but ma	ables an owner of lant to be in the same water ervening parcel without the water supply ay not be used to storn use of groundwater	ershed as the wate out reservation of the with other ripariar re water for later up	er source and mus he riparian right to n users. Riparian	t never have be the severed parights may be u	een severed fr arcel. Genera used to divert	om the source lly, a riparian the natural flo
rights may be exe	nt is required for use rcised only when ther d to obtain a permit a	re is a surplus not i	needed by ripariar	storage of wat n water users.	er. Generally, Since 1914 ne	appropriative w appropriate
statement (1) prov	er Diversion and Use ides a record of wate ream from their divers	er use, (2) enables	the State to notify	such users if s	comeone prop	o <u>s</u> es a new
The above discuss contact an attorne	sion is provided for ge y or write to this office	eneral information. e. We have sever	For more specifi al pamphlets avail	c information co able. They inc	oncerning wate lude:	er rights, pleas
"Statements of Wa	ater Diversion and Us	;e "				 - - -
"Information Perta	ining to Water Rights	in California"			ſ	1
"Appropriation of \	Stockponds Construc Vater in California"	TEG LHOLIO 1909				1
						l _t

WR 40-1 (1/95) FOR0127R3

STATE WATER RESOURCES CONTROL BOARD DIVISION OF WATER RIGHTS P.O. Box 2000 Sacramento, CA 95812-2000

STATEMENT OF WATER DIVERSION AND USE INFORMATION SHEET

DIVERSION SITE:			
OWNER'S NAME	Barry	Lec	Spar/cs
PARCEL NO	(FIRST)	(MIDDLE)	(LASI)
PLACE OF USE: OWNER'S NAME	Barry (FIRST)	(MIDDLE)	Spar/CS
1. PARCEL NO	o		1
2. PARCEL NO)		
3. PARCEL NO)		•
PERSON OR FIRM TO	RECEIVE ALL C	ORRESPONDENCE AND	SUPPLEMENTAL
STATEMENTS:			i
	AGENT/OTHER _	•	
	117	Lee	Spanks
(FIRS	•	(MIDDLE)	(LAST)
MAILING ADDRE	ess P.O.B.	0× 182	
	Monta	somery Creek , Ch	7 96065
OTHERS USING ABOVE	e diversion Lo		
1. NAME			
1. NAME	(FIRST)	(MIDDLE)	(LAST)
1. NAME	, ,	(MIDDLE)	(LAST)
	, ,	(MIDDLE)	(LAST)
	, ,	(MIDDLE)	(LAST)
	(CITY)		
MAILING AD	(CITY)		
MAILING AI	(CITY)		
MAILING AD	(CITY) NO. () (FIRST)	(STATE) -	(ZIP)
MAILING AD TELEPHONE 2. NAME	(CITY) NO. () (FIRST)	(STATE) -	(ZIP)
MAILING AD TELEPHONE 2. NAME	(CITY) NO. () (FIRST)	(STATE) -	(ZIP)
MAILING AD TELEPHONE 2. NAME	(CITY) NO. () (FIRST) ODRESS (CITY)	(STATE) - (MIDDLE)	(ZIP)
MAILING AD TELEPHONE 2. NAME MAILING AD TELEPHONE	(CITY) NO. () (FIRST) DDRESS (CITY) NO. ()	(STATE) - (MIDDLE)	(ZIP) (ZIP)

(1/95)

State of California

morandum

To

Statement Files 10052, 10073, 10077, 10092 10101, 10104, 10123, 10924 and 10960

Date:

JUL 1 6 1992

Katherine Mrowka

Associate WRC Engineer

From

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Subject:

INFORMATION REGARDING THE BASIS OF RIGHT FOR STATEMENTS OF WATER DIVERSION AND USE LISTED ABOVE

During April, 1992, the Division of Water Rights circulated a Staff Analysis of Minor Protested Application 26015. No acceptable hearing requests were filed. Therefore, the Staff Analysis is now considered final. The analysis discusses the basis of right for the Statements of Water Diversion and Use listed above. Therefore, the pertinent pages of the analysis should be included in these files.

Attachments

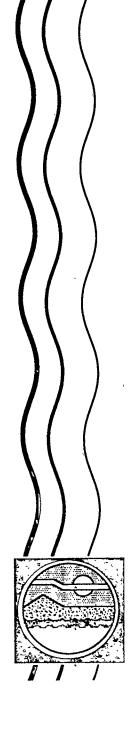


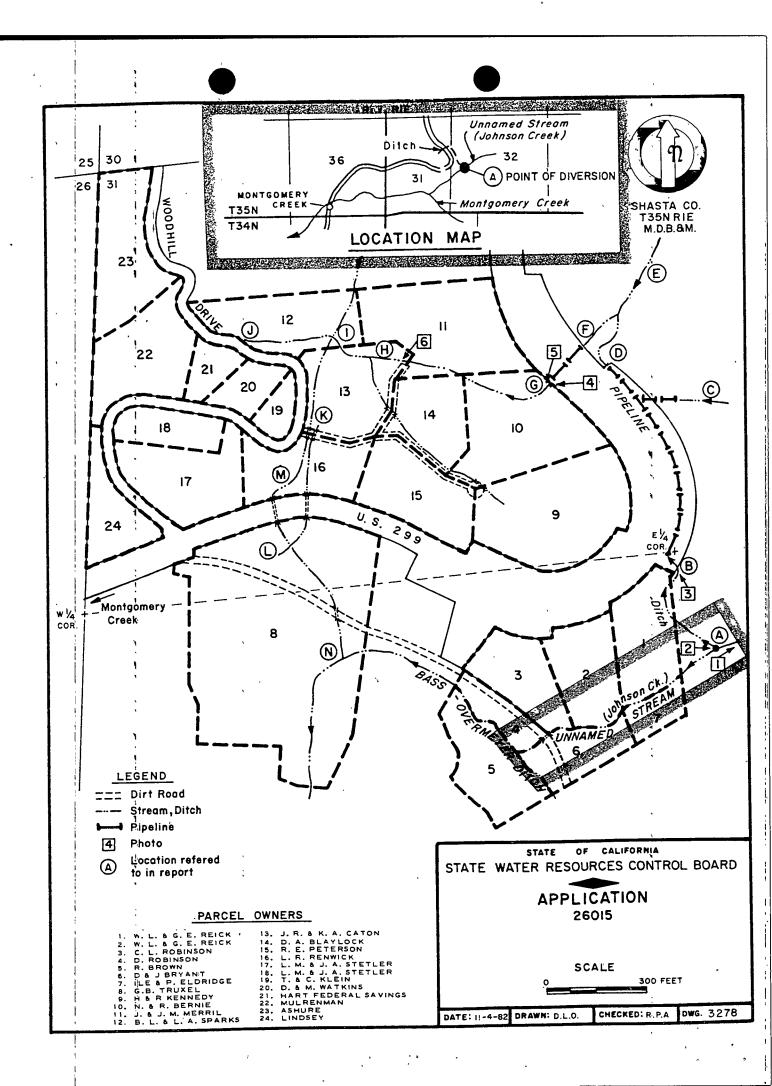
APPLICATION 26015
WILLIAM L. and GEORGENE E. RIECK

Unnamed stream (aka Johnson Creek) tributary to Montgomery Creek in Shasta County,

APRIL 1992

STATE WATER RESOURCES CONTROL BOARD CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY





in 1929 and was eventually sold to the ditch water users. The Notice specifically lists the parcels adjacent to Johnson Creek as the parcels which the claim was intended to serve. Therefore, it does not appear that Mr. Questini intended the claim to establish a basis of right for Parcels 9 through 23.

6.3 Statements of Water Diversions and Use and Listing of Parcel Ownership

Nine of the protestants have filed Statements to describe their claimed water rights. The Statements are listed below:

Statement 10052 10073 10077 10092 10101 10104 10123 10924 10960 ** ** **	Name Sparks Watkins Kennedy Troxell Caton Shuffleton Blaylock, et al Klein Stetler Merrill Petersen Renwick	Parcel 12 20 9 8 13 10 . 14 19 17 & 18 11 15 16 22, 23 &	Amount 2,500 gpd 0.012 cfs 0.050 cfs 0.325 cfs 0.038 cfs 0.095 cfs 0.032 cfs 14,000 gpd 0.060 cfs	Year of First Use 1976 1979 (per protest) 1976 1883 1963 (per protest) 1883 1883 1979 (per protest) 1929 unknown 1883 (per protest)² 1976 (per protest)3
--	---	--	--	---

** No Statement on file for these protestants.

6.4 History of Dispute Regarding Water Use

The Division's records indicate that a dispute arose in 1977 between the owners of Parcels No. 1 through 6 and owners of Parcels No. 8 through 21 as to whether the pre-1914 appropriative rights apparently initiated by John Questini at diversion Point A were lost due to forfeiture for a period of non-use of at least five years prior to 1977. Further information about the ditch was obtained from the "Complaint for Determination of Water Rights, Trespass, Nuisance and Injunction" filed on behalf of William and Georgene Rieck in Shasta County Superior Court on November 3, 1983. The complaint alleges that the Upper ditch was out of service for a substantial period of time in the 1960's and 1970's.

¹⁹⁸² Field Investigation found that the only water which has been used is for fire control. There is limited development of the parcel, and it had been recently sold. The new owner will likely make beneficial use of water in the future.

² 1982 Field Investigation found that no water had been beneficially used for a number of years. The parcel had not been developed.

^{3 1982} Field Investigation found that no water has been used on these parcels for many years.

6.5 Discussion of Pre-1914 Appropriative Right

The 1976 Agreement describes the ditch water right as a riparian right; no reference is made to any pre-1914 appropriative right. However, the Division's Johnson Creek adjudication file indicates that the ditch users have previously claimed a pre-1914 appropriative right on Johnson Creek. Also, the ditch users submitted information regarding a claimed pre-1914 appropriative right to support their protests of Application 26015. The pre-1914 claims of right are described in Section 6.2 of this Analysis.

In reviewing water use under claimed pre-1914 right, the following is noted. First, once an appropriative right has been acquired, it can be maintained only by continuous beneficial use of water. Second, regardless of the amount claimed in the original notice of appropriation or at the time diversion and use first began, the amount which now can be rightfully claimed under an appropriative right initiated prior to December 19, 1914 has, in general, become fixed by actual beneficial use as to both amount and season of diversion. (see California Water Code Section 1202(b)). Third, the place of use or purpose of use may be modified under a pre-1914 claim of right.

The Department of Water Resources (DWR) investigated existing water use in this area of Shasta County (see attached Application 26015 Location Map) and reported this use in "DWR Bulletin 22 - Shasta County Investigation, July, 1964". The report summarizes the lands upon which water was utilized during 1955 and 1956 (see page 66). The irrigated lands are shown on DWR Plate 15 map, dated 1960. Bulletin 22 indicates that less land was irrigated in 1960 than is presently irrigated. The DWR maps indicate that only Parcels 8, 15, 16, 17 and 18 were irrigated in 1960. The map indicated that Parcel 12 is within the boundaries of irrigable lands. The remaining parcels were not included within the presently irrigated or irrigable areas. Finally, the 1956 U.S.G.S. Montgomery Creek quadrangle map shows no houses on Parcels 9 through 24. The only residence which existed at that time was located on Parcel 8.

Many of the protestants have indicated that water use began on their parcels prior to 1960, though their personal domestic use was initiated at a later date. The DWR map provides useful information on the limits of the actual irrigated area in 1960. The Division's 1982 investigation found that no water use was occurring on Parcel 15. Thus, it appears that irrigation of this parcel had ceased by 1982. Irrigation of Parcels 19, 20 and 21 was apparently initiated after 1960. Based upon this information, Division staff concludes that total water use for irrigation purposes has increased beyond historic levels after 1960.

Water use for domestic purposes also appears to have increased after 1914. A summary of annual water development by the ditch users was obtained by adding together the annual use listed in the Statements (see Section 6.3) or obtained by investigation (see Section 7.0 for this data). The first column represents data obtained from the Statements, unless otherwise noted.

Quantity Date Use Began	Parcel Numbers
0.357 cfs 1883	8, 14 (DWR Bulletin 22 indicates that Parcel 14 was not irrigated in 1960 and the 1956 U.S.G.S. map shows no house on this parcel. Therefore, it does not appear that there is a valid pre-1914 claim of right to 0.007 cfs (per 1982 field investigation). Also, an 1883 priority is claimed for Parcels 10 and 15, but the 1982 investigation found that no water was being used on these parcels.)
0.060 cfs 1929	17, 18 (0.072 cfs per investigation)
0.038 cfs 1963	13 (per Statement, 0.0093 cfs per investigation) (Domestic use on Parcels 17 and 18 is said to have begun in 1963irrigation use on these parcels began in 1929. All water used on these two parcels is listed above under year 1929.)
0.073 cfs 1976	9, 12, 16
<u>0.034 cfs</u> 1979	19, 20 (0.026 cfs per investigation)
<u>Total</u> 0.562 cfs	(Investigation concluded use is 0.33 cfs, whereas the use listed in the Statements is 0.56 cfs.)

Seven of the ten protestants have indicated that their use was initiated after 1963. Further, protestant Shuffleton (Parcel 10) has indicated that his use began in 1883. However, the 1982 field investigation found that water use on the Shuffleton parcel was limited to fire protection. Based upon the information summarized above, it appears that use of roughly 0.35 cfs was initiated prior to 1914. Use of about 0.21 cfs (balance of column 1) was apparently initiated after 1914.

The 0.35 cfs noted above (Statement 10092 lists 0.325 cfs) is used on Parcel 8, which also obtains water from the Bass-Overmeyer Ditch under pre-1914 claim of right. Division staff estimates that only part of the 0.325 cfs pre-1914 claimed right for Parcel 8 was obtained from Johnson Creek because Parcel 8 is better situated to obtain water from the Bass-Overmeyer Ditch. Parcel 8 may also obtain water from the unnamed stream which originates on the north side of Highway 299.

Prior to the 1975 settlement of the Estate of Alice May Lattin, the Upper ditch was mainly used to provide water for irrigation purposes. As noted above, the 1960 DWR map indicates that total irrigation use increased after 1960. Thus, Division staff concludes that the increase in domestic use has not been offset by a reduction in irrigation use and total water use has increased

The pre-1914 claim of right filed by John Questini states that it was filed to initiate, a right for Parcels 2, 3, 5, 6 and 8. Mr. Questini indicated that "I intend to divert it by flume and ditch in size adequate to carry the ...

amount appropriated." It does not appear that Mr. Questini intended to initiate a right for Parcels 9 through 23. Even if a right was established for, these parcels, the right would have become fixed by actual beneficial use. It cannot be enlarged at this late date to accommodate the water users who have recently initiated use. Water use has increased since 1914 and it does not appear that the new uses can be classified as maintenance of any prelexisting appropriative right that may have existed. Thus, it appears that the claimed pre-1914 appropriative right is inadequate to cover present uses and the protests filed by the owners of Parcels 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23 and 24 cannot be maintained. The protest filed by the owner of Parcel 14 can only be maintained if domestic use has been ongoing since December 19, 1914, because Division records indicate that the property was not historically irrigated. However, the 1956 U.S.G.S. Montgomery Creek quadrangle map indicates that there was no house on Parcel 14 in 1956. Thus, the protest filed by Blaylock, et al. (Parcel 14) should be dismissed. Only the protest filed by Troxell (Parcel 8) based upon a pre-1914 claim of right should be maintained. Division staff notes that Merrill, the owner of Parcels 11 and 21 did not protest Application 26015.

6.6 Riparian Claim of Right

The recorded water supply agreement (see Section 6.1) states that the basis of right is riparian. A riparian right is limited to the amount which is naturally tributary to the property, exists by reason of ownership of land abutting upon a stream or body of water and affords no basis of right to use water upon nonriparian land. (Rancho Santa Margarita v. Vail, 11 Cal. 2d 501, 80 P. 2d 533) The shaded area on the Location Map indicates the approximate boundary of the land within the watershed of Johnson Creek, which is the extent of the lands riparian to this source. The riparian right for use of Johnson Creek water does not appear to extend to Parcels 9 through 23 because the plands are not within the watershed of the source. The property owners (of Parcels 9 through 23) may be served under riparian claim of right from the other three sources shown on the Location Map (at locations C, E, and I) if the ditch was established prior to subdivision of the ranch and the riparian right was preserved.

Parcel 8 is within the watershed of Johnson Creek. In order to divert water under claim of riparian right, the diverter must use the water on riparian land but need not own the land at the point of diversion. That is, such diverter may divert at a point upstream from his land so long as permission is granted to use that point of diversion, and intervening land owners between the point of diversion and the place of use are not adversely affected by such practices. (Turner v. James Canal Co., 155 Cal. 82, 99 P. 520 (1909)) To use the point of diversion on BLM land, the water must pass through the Rieck property in the ditch (he appears to be riparian on the portion of his land which is within the watershed of Johnson Creek). The Riecks object to the claimed riparian diversion by the ditch water users and filed a Complaint for Determination of Water Rights, Trespass, Nuisance and Injunction in the Shasta County Superior Court on November 3, 1983. Due to the expense of pursuing this matter in Court, Mr. Rieck has expressed his desire for the Division to proceed with a determination of whether Application 26015 should be permitted.

6.6.1 Conclusions Regarding Riparian Rights of Protestants

It does not appear that water from Johnson Creek which is conveyed by the Upper ditch can be used on Parcels 9 through 23 under a riparian claim of right because these parcels are located outside of the watershed of Johnson Creek. Further, it appears that Parcel 8 cannot be served under riparian claim of right because the landowner at the point of diversion, the Riecks, have denied access to the point of diversion and the Riecks claim that the present diversion is adverse to their riparian right. It appears that this element of the protest based on injury to vested rights should be dismissed because the protestants do not appear to have a valid basis of riparian right for Johnson Creek.

7.0 AVAILABILITY OF UNAPPROPRIATED WATER

As described in the protest filed by the Bureau, the proposed diversion season is inconsistent with the times when unappropriated water is available as determined by the State Water Board in Decision 1045. The applicant may be entitled to water pursuant to an area of origin principle. However, this analysis is silent on this issue because of other State Water Board decisions which affect water availability in this watershed (see discussion of Decision 1594 below). The previous applicant, Paul Rideout, agreed to the following permit term to address the water availability issue:

"During the period between June 15 and September 1, if in the absence of permittee's diversion, hydraulic continuity would exist between permittee's diversion point and Montgomery Creek, permittee shall not divert water, but shall open his diversion works and allow the water to flow undiminished downstream."

Division staff does not recommend inclusion of the proposed permit term. Johnson Creek is a perennial stream. The proposed term would require continual flow bypass during the summer months and the Riecks would not be able to divert water under riparian claim of right in these circumstances. Alternatives to inclusion of this term exist and appear to be feasible. In Decision 1594, the State Water Board found that there is no unappropriated water available from June 15 through August 31 to approve diversions of less than one cfs from any tributary of the San Francisco Bay-San Joaquin Delta above Collinsville. Roughly one-half of the Riecks property is located within the Johnson Creek watershed (see Location Map) and may be served under riparian claim of right. However, the application does not indicate which part of the parcel will be served and the Division's records do not indicate whether only the riparian portion of the Rieck property will be served. Thus, it appears that the options for issuance of a permit authorizing year-round appropriation of water should be investigated.

One option is to authorize continual diversion (January 1 through December 31) if a water exchange contract is entered into with the Shasta County Water Agency (this is one of the alternatives suggested by the Bureau to resolve it's protest) and is consistent with State Water Board Decision 1045. If a water exchange contract is obtained to cover summer diversion, then any permit

STATE OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD Division of Water Rights

P.O. BOX 2000 SACRAMENTO, CA 95810 901 P ST. SACRAMENTO, CA 1/475 (916) 322-4503 (916) 324-56765 SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE 1992 JU

DIVER	TER OF	RECO	RD:		CIV	. OF:		- 70		STAT	T E M EN 1	NO:	01005	2 -
ì	BARRY I	L & L'	YNŅ A	SPARI	<s< td=""><td>SAC</td><td></td><td></td><td></td><td></td><td>ı</td><td></td><td></td><td>•</td></s<>	SAC					ı			•
	POBO) Montgoi		CREEK.	. CA S	96065									
•				• • • • • • • • • • • • • • • • • • • •								•	NUMB1	
	IF NA	ME/ADI	DRESS	/PHONE	E NO.	IS W	RONG (OR MIS	SSING	, PLE	•			•
	SOURCE									-			-	
TOTOII	TARY TO													
INIBO	.				\ L . I\									
A T :	COUNT		ASIA								,			
יוט	VERSIOI WITHII	A: MM,	1/4 0	F SW1	/4 SE	CTION	32,	T 35N,	RO1E	, MDB	3 M .			
ISTRUC	TIONS: art of y	Please	comp	lete Ite	ms A.	B and	C. Ite	m D s	should	be co	mplete	d if yo	ou repla	ıced
	M BY JU			92.	(A	ddition	al inf	ormatic	on on	rever	se sid	e of	this fo	rm.)
	unt of l month									nounts		Gallons Acre-fee	et	
	n, chec													other
	, Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total	
1989			T	T				l i				<u> </u>	2/00/20	
1990	60,000	,			ŕ		,	'			1		3,990	
1991	60,000		1	,		1					´ ;		3,970,0	
	60,000	,	,					,		,	,	•	3,770,	
. <u>Purp</u>	ose of		=	-							d, per _í	sons :	served,	etc.
	Įrriga !	tion <u> </u>	1/2 acre	sume	eyard	2,18	zacie	5 m	Mand	<u> </u>				
St	ockwate			,		-				ภา		<u> </u>		
	Dome	estic	acre	sla	un 3	-ga	den	, 3	peop	le		<u> </u>		
Oth	ner (spec	cify)								.		·		—
previ	nges in ious sta rsion, etc	tement	d of D was	iversior filed.	ı - De (New	scribe pump,	any d enlar	chang ged o	es in diversi	you on d	r pro am, l	ject s ocatio	since y	your
				1	4 on	2			-					
		,										·		
								,						
					David	A	ai ata	of ro	alaima	d or	' فياليون	od wa	ator ni	10250
indic	art of tate	annua	al amo	ounts c	of recla	aimed	or pol	lluted	water	in the	space	e belov	ν.	casc
														•
	1		***								-			
	ı						_				" "		7.	
I declare	under penalty	of perjury	y that the	information	in this rep	port is true	to the bes	t of my kn	owledge an	d belief.				

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

There are two principal types of surface water rights in California. They are riparian and appropriative rights.

A riparian right enables an owner of land bordering a natural lake or stream to take and use water on his riparian land. Riparian land must be in the same watershed as the water source and must never have been severed from the source of supply by an intervening parcel without reservation of the riparian right to the severed parcel. Generally, a riparian water user must share the water supply with other riparian users. Riparian rights may be used to divert the natural flow of a stream but may not be used to store water for later use or to divert water which originates in a different watershed, or return flows from use of groundwater.

An <u>appropriative right</u> is required for use of water on nonriparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914 new appropriators have been required to obtain a permit and license from the State.

Statements of Water Diversion and Use must be filed by riparian and pre-1914 appropriative water users. The filing of a statement (1) provides a record of water use, (2) enables the State to notify such users if someone proposes a new appropriation upstream from their diversion, and (3) assists the State to determine if additional water is available for future appropriators.

The above discussion is provided for general information. For more specific information concerning water rights, please contact an attorney or write to this office. We have several pamphlets available. They include:

"Statements of Water Diversion and Use"

"Information Pertaining to Water Rights in California"

"Water Rights for Stockponds Constructed Prior to 1969"

"Appropriation of Water in California"

STATE OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD Division of Water Rights

P.O. BOX 2000 SACRAMENTO, CA 95810 901 P ST. SACRAMENTO, CA (916) 322-4503

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

		i '
DIVERTER OF RECORD:		STATEMENT NO: 010052
BARRY L & LYNN A S	PARKS	Į.
P O BOX 182 Montgomery Creek, (CALIF 96065	1
		TELEPHONE NUMBER: (946) 337-6734
IF NAME/ADDRESS/P	HONE NO. IS WRONG OR MIS	SING, PLEASE CORRECT. STATE
SOURCE: JOHNSON C	REEK	CONU.
TRIBUTARY TO: MONTGOMER	Y CREEK	ATER I TROI E WATEI DRAME
COUNTY: SHASTA		
DIVERSION WITHIN: NW1/4 OF	SW1/4 SECTION 32, T35N,	RO1E, MDB&M.
all or part of your regular wat	ter supply with reclaimed or	ould be completed if you replaced
THIS FORM BY JULY 1, 1986 A. Amount of Use - Fill in the	•	Amounts
each month. If monthly as known, check the months in	nd annual use are not	below are:
Jan. Feb Mar. A	pr. May June July Aug.	Total Sept Oct. Nov. Dec. Annual
	000 200,000 550,000 650,000 600,000 6	
		00,000 100,000 60,600 60,000 7,976,000
		00,000 100,000 60,000 60,000 2970,000
b	1	ck watered, persons served, etc.
Irrigation 3		
	ens, 2 cows, horse, a	log, cats
	eople	
•]
C. Changes in Method of Diverprevious statement was file diversion, etc.)	rsion - Describe any change rd. (New pump, enlarged di	s in your project since your version dam, location of
· · · · · · · · · · · · · · · · · · ·		ţ.
		}
D. If part of the water listed indicate the annual amount	in Part A consists of recl s of reclaimed or polluted w	aimed or polluted water, please ater in the space below.
<u></u>		1
	and in this provide in the boat of one form	uladae and helief
1	nation in this report is true to the best of my know	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
DATED: 6/27	. 19 86 . at monty may	Cael California . California
•	Signature: Diany	Lopales him am Spail
WR 40-I (11/85) G 7 9 7	1985	

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

There are two principal types of surface water rights in California. They are riparian and appropriative rights.

A riparian right enables an owner of land bordering a natural lake or stream to take and use water on his riparian land. Riparian land must be in the same watershed as the water source and must never have been severed from the source of supply by an intervening parcel without reservation of the riparian right to the severed parcel. Generally, a riparian water user must share the water supply with other riparian users. Riparian rights may be used to divert the natural flow of a stream but may not be used to store water for later use or to divert water which originates in a different watershed, or return flows from use of groundwater.

An <u>appropriative right</u> is required for use of water on nonriparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914 new appropriators have been required to obtain a permit and license from the State.

Statements of Water Diversion and Use must be filed by riparian and pre-1914 appropriative water users. The filing of a statement (1) provides a record of water use, (2) enables the State to notify such users if someone proposes a new appropriation upstream from their diversion, and (3) assists the State to determine if additional water is available for future appropriators.

The above discussion is provided for general information. For more specific information concerning water rights, please contact an attorney or write to this office. We have several pamphlets available. They include:

"Statements of Water Diversion and Use"

"Information Pertaining to Water Rights in California"

"Water Rights for Stockponds Constructed Prior to 1969"

"Appropriation of Water in California"

STATE OF CALIFORNIA

APC

STATE WATER RESOURCES CONTROL BOARD	
TATE WATER RESOURCES DIVISION OF WATER RIGHTS	
STATEMENT OF WATER DIVERSION AND USE	
(This is not a Water Right) This statement should be typewritten or legibly written in ink.	
SAMER RICE OF THE SAMER RICE OF SAMER RICE O	10052
. Name of person diverting water Dayru F 4 Lun II Dourks	
Address P.O. Box 182, Montgomery Creek 96065 Telephone: 337-6	<u> 734 </u>
. Name of body of water at point of diversion Johnson Creek (unmared 5)	<u>.) </u>
Tributary to Montgomery creek	7
	10_b&m,
cl +	_
Shorta County, or locate it on sketch of section grid on reverse side with regard	l to section
lines or prominent local landmarks.	
). Name of works	
I amonity of diversion works	t per second
Capacity of storage reservoir gallons	er minute
State quantity of water wad airch month in gallons on one fact	
Year Jan. Feb. Mar. Apr. May June July Aug. Sept. Oct. Nov. Dec.	Total Annual
4000 6000 6500 7000 7500 7500 7500 7500 7	- Alluida.
1900 6900 6500 7000 7900 7900 7900	
Maximum annual water use in recent years gallons	
Annumum annual water use in recent years	;
Type of diversion facility: gravity, pump	
	mate
Purpose of use (what water is being used for) Domestic Use, irrigation, are	chand
General description or location of place of use (use sketch of section grid on reverse side if	vou desire
General description or location of place of use (use sketch of section grid on reverse side if Section 31, Township 35 North, Range / East MDM	,
1970	
I. Year of first use as nearly as known	
I. Name of person filing statement Barry L & Lynn # Sparks	
Position Organization	
AddressTelephone:	
I declare under penalty of perjury that the above is true and correct to the best of my knowledge ar	d belief
DATED: April 15, 1980, at Montgomery Creek, C	
	alifornia
Signatura: Dre A A Library And Library	Aifornia.
Signature: Bonny of See Instructions on Reverse Side	Milornia Um Dp